IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

EARNEST BRADLEY — PLAINTIFF

vs. — Civil Action No. 1:97cv119-D-D

DELTA INTERNATIONAL
MACHINERY CORPORATION — DEFENDANT

MEMORANDUM OPINION

This cause involves the allegations of the plaintiff Earnest Bradley that the defendant Delta International Machinery Corporation ("Delta") discriminated against him on the basis of race by demoting him. Presently before the court is the motion of the defendant for the entry of summary judgment on its behalf against the plaintiff's claims in the case at bar. Finding that the motion is well taken, the court shall grant it and dismiss the plaintiff's claims.

. Factual Background[1]

The plaintiff Earnest Bradley, began employment with the defendant Delta in July of 1975. After one year of working as a tow motor driver and another on an assembly line, the plaintiff began working in Delta's machine shop. In 1994, the plaintiff was promoted to a supervisory position over the machine shop. Mr. Bradley is Caucasian.

In July of 1996, Delta demoted the plaintiff from his supervisory position back to an hourly position. At the time, there were four other manufacturing supervisors at Delta. Of the four supervisors who remained with Delta and were not demoted, three are Caucasian (James Wall, James Michael Edwards and Michael Tubb) and the remaining supervisor is African-American (Gerald Patterson).

. Discussion

[1] In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Anderson, 477 U.S. at 255. The court's factual summary is so drafted. The court chooses not to provide an in-depth discussion of all of the facts surrounding this case, but rather will discuss pertinent facts in the body of its opinion as they become necessary.

. Summary Judgment Standard

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden rests upon the party seeking summary judgment to show the district court that an absence of evidence exists in the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986); see Jackson v. Widnall, 99 F.3d 710, 713 (5th Cir. 1996); Hirras v. Nat'l R.R. Passenger Corp., 95 F.3d 396, 399 (5th Cir. 1996). Once such a showing is presented by the moving party, the burden shifts to the non-moving party to demonstrate, by specific facts, that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); Texas Manufactured Housing Ass'n, Inc. v. City of Nederland, 101 F.3d 1095, 1099 (5th Cir. 1996); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). Substantive law will determine what is considered material. Anderson, 477 U.S. at 248; see Nichols v. Loral Vought Sys. Corp., 81 F.3d 38, 40 (5th Cir. 1996). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099; Gibson v. Rich, 44 F.3d 274, 277 (5th Cir. 1995). Further, "[w]here the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue of fact for trial." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099. Finally, all facts are considered in favor of the non-moving party, including all reasonable inferences therefrom. See Anderson, 477 U.S. at 254; Banc One Capital Partners Corp. v. Kneipper, 67 F.3d 1187, 1198 (5th Cir. 1995); Taylor v. Gregg, 36 F.3d 453, 455 (5th Cir. 1994); Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir. 1994). However, this is so only when there is "an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994); Guillory v. Domtar Industries Inc., 95 F.3d

1320, 1326 (5th Cir. 1996); Richter v. Merchants Fast Motor Lines, Inc., 83 F.3d 96, 97 (5th Cir. 1996). In the absence of proof, the court does not "assume that the nonmoving party could or would prove the necessary facts." Little, 37 F.3d at 1075 (emphasis omitted); see Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 111 L. Ed. 695, 110 S. Ct. 3177 (1990).

. Title VII

. Disparate Treatment - Generally

Title VII of the Civil Rights Act of 1965 provides in relevant part:

> It shall be an unlawful employment practice for an employer--(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race ...

42 U.S.C. S 2000e-2(a)(1). Title VII protects all employees from racial discrimination, regardless of race. McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 280, 96 S.Ct. 2574, 2578, 49 L.Ed.2d 493 (1976) ("The Act prohibits all racial discrimination in employment, without exception for any group of particular employees.... "). The ultimate question in an asserted case of racial discrimination under Title VII is whether the plaintiff's race was a factor in an adverse employment decision against her. Rhodes v. Guiberson Oil Tools, 39 F.3d 537, 544 (5th Cir.1994) ("A claim under Title VII ... cannot 'succeed unless the employees' protected trait actually played a role in that process and had a determinative influence on the outcome.' ").

However, given that many employment discrimination cases involve elusive factual questions, the Supreme Court has devised an evidentiary procedure that allocates the burdens of production and persuasion when the plaintiff is unable to come forward with direct evidence of discrimination. In a claim of race discrimination brought under Title VII, the evidentiary procedure to be utilized was originally introduced in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and more recently reaffirmed in St. Mary's Honor Ctr. v. Hicks, 509 U.S.--, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993). Under McDonnell Douglas, the plaintiff has the initial burden of proving a prima facie case of discrimination. Id. at 802. If the plaintiff establishes a prima facie case, a presumption of discrimination arises and the burden of production shifts to the

employer to "articulate some legitimate, nondiscriminatory reason for the discharge." Flanagan v. Aaron E. Henry Community Health Serv. Ctr., 876 F.2d 1231, 1233-34 (5th Cir.1989); Whiting v. Jackson State Univ., 616 F.2d 116, 121 (5th Cir.1980). The employer need not prove the absence of a discriminatory motive. Whiting, 616 F.2d at 121. Once the employer articulates its nondiscriminatory reason, the burden is again on the plaintiff to prove that the articulated legitimate reason was a mere pretext for a discriminatory decision. Id. Ultimately, the burden of persuasion rests on the plaintiff, who must establish the statutory violation by a preponderance of the evidence. Id. (citing Jepsen v. Florida Bd. of Regents, 610 F.2d 1379, 1382 (5th Cir.1980)). Even if the plaintiff succeeds in revealing the defendants' reasons for terminating him were false, she still bears the ultimate responsibility of proving the real reason was unlawful "intentional discrimination." See St. Mary's, 125 L.Ed.2d at 424 ("It is not enough to disbelieve the employer; the fact finder must believe the plaintiff's explanation of intentional discrimination."). This is not to say that the employee is required to prove that the reason is in fact false, but only that the proffered reason was not the only real motivation behind the employer's decision and that discrimination was at least a substantial motivating factor in that decision. Again, a plaintiff is not required to prove that discrimination based upon race was the sole reason for the termination, because the employer may be held liable under Title VII even if legitimate reasons - such as the defendant's legitimate, nondiscriminatory reason - also played a role in the plaintiff's termination.

> [S]ince we know that the words "because of" do not mean "solely because of," we also know that Title VII meant to condemn even those decisions based on a mixture of legitimate and illegitimate considerations.

Price Waterhouse v. Hopkins, 490 U.S. 228, 240, 109 S.Ct. 1775, 1785, 104 L.Ed.2d 268 (1989). Nevertheless, the fact that a plaintiff may establish genuine issues of material fact as to his *prima facie* case does not necessarily mean that he may avoid summary judgment on his discrimination claims. LaPierre v. Benson Nissan, Inc., 86 F.3d 444, 450 (5th Cir.1996); Rhodes v. Guiberson Oil Tools, 75 F.3d 989, 993 (5th Cir.1996). Rather, to avoid the grant of a properly made motion for summary judgment, a plaintiff must ultimately present evidence sufficient to make a reasonable inference of

discriminatory intent. LaPierre, 86 F.3d at 450.

> [A] jury issue will be presented and a plaintiff can avoid summary judgment ... if the evidence taken as a whole (1) creates a fact issue as to whether each of the employer's stated reasons was what actually motivated the employer and (2) creates a reasonable inference that [race] was a determinative factor in the actions of which the plaintiff complains.

Id. (citing Rhodes, 75 F.3d at 994). According to the United States Supreme Court, such evidence of falsity will permit a trier of fact to infer that the discrimination was intentional:

> The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons, will permit the trier of fact to infer the ultimate fact of intentional discrimination, and the Court of Appeals was correct when it noted that, upon such rejection, "[n]o additional proof of discrimination is required...."

St. Mary's, 509 U.S. at ----, 113 S.Ct. at 2749. Determining that a particular reason did not actually serve as the sole basis for termination is an entirely different inquiry than determinating that the proffered reason is factually false. For example, whether an employer fired a person for being incompetent is a different question from whether that person is in fact incompetent. It is important to remember the distinction.

At the summary judgment stage, a plaintiff need not prove a prima facie case of discrimination, but must simply raise a genuine issue of material fact as to the existence of a prima facie case. Thornborough v. Columbus & Greenville R. Co., 760 F.2d 633, 641 n. 8 (5th Cir.1985). In order for the typical Title VII plaintiff to establish a *prima facie* case of racial discrimination in a disparate treatment context, she must show that she:

1) was a member of a protected class;

2) was qualified for the position that she held;

3) suffered an adverse employment decision; and

4) the plaintiff's employer replaced her with a person who is not a member of the protected class, or in cases where the employer does not intend to replace the plaintiff, the employer retains others in similar positions who are not members of the protected class.

Meinecke v. H & R Block Income Tax Sch., Inc., 66 F.3d 77, 83 (5th Cir.1995); Valdez v. San Antonio Chamber of Commerce, 974 F.2d 592, 596 (5th Cir.1992); Thornbrough v. Columbus &

Greenville R. Co., 760 F.2d 633, 642 (5th Cir.1985) (citing Williams v. General Motors Corp., 656 F.2d 120, 129 (5th Cir.1981), *cert. denied*, 455 U.S. 943, 102 S.Ct. 1439, 71 L.Ed.2d 655 (1982)).

. Disparate Treatment - The Plaintiff's Claim of Demotion

Under the facts of the present case, the undersigned has little problem in determining that the plaintiff is capable of establishing, or at least creating genuine issues of material fact regarding, the elements of his *prima facie* case for a claim of disparate treatment. Caucasian plaintiffs are members of a protected class under Title VII.[2] McDonald v. Santa Fe Trail Trans. Co., 427 U.S. 273, 49 L.Ed.2d 493, 96 S.Ct. 2574 (1976) ("The Act prohibits all racial discrimination in employment, without exception for any group of particular employees.... "). As to the second element, the defendant itself concedes that the plaintiff was qualified for the position he held. Defendant's Rebuttal Brief, p. 8 ("Defendant does not contend that Plaintiff was a bad employee, or unqualified as a supervisor."). Additionally, the defendant does not contest that the plaintiff suffered an adverse employment decision (*i.e.*, demotion), nor that the defendant, as a part of this reduction in force, retained a non-white supervisor when it demoted the plaintiff.

As sufficient evidence is before the court to permit the plaintiff to establish his *prima facie* case, the burden of production shifts to the defendant Delta to articulate a legitimate, nondiscriminatory reason for the demotion. Here, Delta states that the reason for the plaintiff's demotion was that the plaintiff, after consideration of various legitimate factors, was the least qualified supervisor. This stated reason is sufficient to meet Delta's burden of production regarding

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[2] The defendant does argue that the plaintiff, a Caucasian, is incapable of establishing the first element of a *prima facie* case. Defendant's Brief, p. 3 ("Plaintiff is unable to establish a prima facie case of racial discrimination, as he was plainly not a member of a racial minority at Delta."); see Flanagan, 876 F.2d at 1233 (alluding to requirement that majority plaintiffs establish that they belonged to a racial minority "within the company" as first *prima facie* case element.). As the defendant is aware, however, this court has previously addressed the question of the applicability of Title VII claims made by Caucasian plaintiffs and has explained that such a "minority within the workplace" requirement is not necessarily required of majority plaintiffs. Barnes v. Federal Express Corp., 1997 WL 271709, *6 (N.D. Miss. May 15, 1997); see also Singh v. Shoney's, Inc., 64 F.3d 217, 219 (5th Cir.1995); Young v. City of Houston, 906 F.2d 177, 180 (5th Cir.1990); Lejeune v. Avondale Industries, Inc., 1996 WL 225029, *3 (E.D. La. May 1, 1996) ("[The][p]laintiff being white, the first element of his *prima facie* case is established."). All that is required is that the plaintiff, like any Title VII plaintiff, demonstrate facts surrounding the adverse employment decision which give rise to an inference of discrimination. See, e.g., O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 878, 116 S.Ct. 1307, 1310, 134 L.Ed.2d 433, (1996); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207, 215 (1981).

legitimate, non-discriminatory reasons for the plaintiff's demotion. The *prima facie* case analysis evaporates, and now the court must determine whether a genuine issue of material fact exists regarding the ultimate question of discrimination - was the plaintiff's race a substantial motivating factor in his demotion by Delta?[3]

When looking to the record in this cause, the undersigned concludes that sufficient admissible probative evidence is lacking. The only real proof of discrimination proffered by the plaintiff regarding discrimination is:

) A Delta "Employee Notice" dated April 15, 1993 which states in relevant part: As part of our continued commitment to Equal Employment Opportunity and Affirmative Action; minority and female employees who wish to be considered for future salaries positions as Supervisor Assembly/Machining are invited to make their interest known.

) Various statements of supervisory officials regarding the hiring of a minority employee as a supervisor in 1993. The plaintiff proffers evidence regarding the hiring such as, "Dennis told me that it had to be a lady or a black person to fill this position, that that was what they were seeking."

) A "Personnel Policy" statement issued by Delta in 1993 regarding "Equal Employment Opportunity" which states that business units may be required to "update a standard form Affirmative Action Plan annually" and "develop programs which have the greatest opportunity to advance minorities and women."

There is not, however, any evidence that the defendant ever actually adopted or updated an affirmative action plan which might affect the demotion in question. Likewise, there is no evidence of statements that the demotion of the plaintiff occurred because Delta "had to" keep the one black supervisor in that position. While statements regarding the 1993 supervisory hiring are excellent direct evidence of discrimination in that employment action, they bear less probative weight with regard to the plaintiff's demotion. Indeed, such statements may not even be admissible at trial. Fed.

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[3] Delta also argues to the undersigned that the plaintiff is required to show that he was "clearly more qualified than the supervisors retained" in the reduction in force. EECO v. Texas Instruments, Inc., 100 F.3d 1173, 1184 (5th Cir. 1996). This court does not agree. "A showing that a discharged employee was clearly better qualified than . . . retained employees [outside the protected class] is merely one of many ways that a plaintiff can show that a reduction-in-force was a mere pretext for . . . discrimination." E.E.O.C. v. Manville Sales Corp., 27 F. 3d 1087, 1095 n.5 (5th Cir. 1994); see also Walther v. Lone Star Gas Co., 952 F.2d 119, 123 (5th Cir. 1992) ("[A] plaintiff *can* take his case to a jury with evidence that he was clearly better qualified than . . . employees who were retained.") (emphasis added); Amburgey v. Corhart Refractories, Corp., Inc., 936 F.2d 805, 814 (5th Cir. 1991) ("[E]vidence that the plaintiff was clearly better qualified would be one way of showing that [the employer's] explanation is a pretext.").

R. Evid. 403, 404(b). If believed, the probative weight of this single previous act of discrimination is lessened by many factors - including the temporal proximity to the plaintiff's demotion and the undisputed fact that Delta later promoted Caucasians, including the plaintiff, to supervisory positions.

Aside from this, the only proof before the court[4] regards the legitimacy of Delta's proffered reasons for the demotion. The undersigned recognizes that in some cases, such evidence of falsity combined with the elements of the *prima facie* case can be sufficient to support a finding of pretext for discrimination. St. Mary's, 509 U.S. at ----, 113 S.Ct. at 2749. The case at bar, however, is not one where such a showing is enough. It is the opinion of this court that no reasonable juror could find, based upon the evidence presently before the court, that the plaintiff's race was a substantial motivating factor in Delta's decision to demote him. Therefore, the court shall grant the defendant's motion for summary judgment and dismiss the plaintiff's claims.

III. Conclusion

Based upon the admissible evidence before this court, the undersigned is of the opinion that the plaintiff is capable of establishing a *prima facie* case of racial discrimination. Nevertheless, he has failed to come forward and refute a properly made motion for summary judgment on the ultimate issue of discrimination in this case. That is, no reasonable juror could, based upon the evidence before this court, determine that the plaintiff's race was a substantial motivating factor in the decision of the defendant to demote him. There is no genuine issue of material fact regarding the plaintiff's claims and the defendant is entitled to the entry of a judgment as a matter of law.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of May 1998.

United States District Judge

[4] The court notes that the plaintiff has very recently made a supplementation to its summary judgment evidence before this court. This undersigned has considered this submission in making today's ruling.

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ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND DISMISSING CAUSE

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

) the motion of the plaintiff to file supplemental evidentiary materials is hereby GRANTED;

) the motion of the defendant for the entry of summary judgment on its behalf with regard to the plaintiff's claims is hereby GRANTED;

) the plaintiff's claims in this matter are hereby DISMISSED; and

) this case is CLOSED.

SO ORDERED, this the _____ day of May 1998.

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United States District Judge